

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kenneth Ray Barnett,)	No. CV-04-1205-PHX-FJM
Plaintiff,)	ORDER
vs.)	
Pinal County Administration, et al.,)	
Defendants.)	

The court has before it the Report and Recommendation of the United States Magistrate Judge (doc. 21) and plaintiff's objections thereto (doc. 24). For the following reasons, we accept the recommendation of the Magistrate Judge within the meaning of Rule 72(b), Fed. R. Civ. P.

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the court is required to dismiss an in forma pauperis case at any time if the plaintiff fails to state a claim upon which relief may be granted. Failure to state a claim includes circumstances where a defense, such as expiration of the statute of limitations, is complete and obvious from the face of the pleadings. See Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984). In the absence of a waiver, the court may raise the defense of statute of limitations sua sponte. Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 687 (9th Cir. 1993), cert. denied, 510 U.S. 1093, 114 S. Ct. 924 (1994).

1 Plaintiff commenced this action on May 17, 2004, challenging his conditions of
2 confinement at the old Pinal County Jail from 1982 to 1983, and from 1986 to 1996. The
3 Magistrate Judge concluded that applying Arizona's two-year statute of limitations and
4 relevant tolling provisions, plaintiff's cause of action accrued on July 20, 1996, and therefore
5 plaintiff was required to file his complaint no later than July 20, 1998. Because plaintiff's
6 complaint was filed almost eight years after the cause of action accrued, the Magistrate Judge
7 now recommends dismissal of plaintiff's complaint.

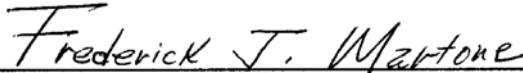
8 Plaintiff challenges the Magistrate Judge's recommendation, arguing that he only
9 became aware of his "capability to assert his rights" in November 2003, when he learned of
10 litigation brought by other inmates involving conditions of confinement at the old Pinal
11 County Jail. Objections at 1. He claims that it was only at this time that he "comprehend[ed]
12 the nature of his confinement." Id. He therefore contends that the statute of limitations did
13 not begin to run until November 2003. We disagree.

14 "Statutes of limitation . . . are triggered by claimants' knowledge of the transaction that
15 constituted the alleged violation, not by their knowledge of the law." Lee v. United States,
16 809 F.2d 1406, 1410 (9th Cir. 1987) (quotation omitted). "A claim accrues as soon as a
17 potential claimant either is aware or should be aware of the existence of and source of his
18 injury, not when he knows or should know that the injury constitutes a legal wrong." Id. at
19 1410 (citing United States v. Kubrick, 444 U.S. 111, 123, 100 S. Ct. 352, 360 (1979) (a cause
20 of action accrues when a claimant is "armed with the facts about the harm done to him")).

21 Plaintiff was last incarcerated at the old Pinal County Jail in March 1996. He was
22 necessarily aware of the conditions of his confinement that constitute the gravamen of his
23 complaint by this time. We agree with the Magistrate Judge's conclusion that plaintiff's
24 complaint, filed on May 17, 2004, more than eight years after he was last incarcerated at the
25 old Pinal County Jail, was well outside the two-year statute of limitations period.

1 We accept the recommended decision of the United States Magistrate Judge within
2 the meaning of Rule 72(b), Fed. R. Civ. P. Accordingly, **IT IS ORDERED DISMISSING**
3 this action with prejudice.

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5 DATED this 13th day of November, 2006.

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 Frederick J. Martone
United States District Judge